

EXHIBIT A

Case Information

21DCV327696 | Scott & White Healthplan VS. Actian Corporation

Case Number
21DCV327696
File Date
10/01/2021

Court
169th Judicial District Court
Case Type
Other Civil

Judicial Officer
Starritt-Burnett, Cari
Case Status
Active

Party

Plaintiff
Scott & White Healthplan

Active Attorneys ▼
Lead Attorney
GEISLER, R. CHAD
Retained

Plaintiff
SHA, LLC d/b/a FirstCare

Active Attorneys ▼
Lead Attorney
GEISLER, R. CHAD
Retained

Defendant
Actian Corporation

Events and Hearings

10/01/2021 New Case Filed (OCA)

10/01/2021 Petition (e-File) ▼

Comment

PLAINTIFFS' ORIGINAL PETITION BY GEISLER

10/12/2021 Request for Service ▼

Comment

REQUEST FOR SERVICE FOR ACTIAN CORPORATION

10/14/2021 Clerk's Copy ▼

Comment

CLERKS COPY OF CICM ON ACTIAN - CERTIFIED MAIL

10/14/2021 Citation - Certified Mail ▼

Unserved

Anticipated Server

Other Server

Anticipated Method

Certified Mail

THE STATE OF TEXAS

CITATION BY MAIL

Cause No. 21DCV327696

 **COPY**

To:

**ACTIAN CORPORATION
REGISTERED AGENT: CT CORPORATION
1999 BRYAN ST.
DALLAS, TX 75201-3136**

Defendant, in the hereinafter styled and numbered cause:

You are hereby commanded to appear by filing a written answer to the **PLAINTIFFS' ORIGINAL PETITION** at or before 10:00 a.m. on the first Monday following the expiration of twenty (20) days from the date of service hereof, with the clerk of the **169th Judicial District Court**, Bell County, Texas, to be held at the Bell County Justice Complex Building, District Courts in Belton, Texas, a copy of which accompanies this citation, in cause number **21DCV327696**, styled

Scott & White Healthplan VS. Actian Corporationfiled in the said court on **October 01, 2021**.

This was issued at the request of attorney: **R. CHAD GEISLER ONE BARTON SKYWAY 1501 S MOPAC EXPY SUITE A400 AUSTIN TX 78746**.

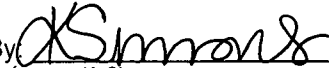
NOTICE TO Defendant: *You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 AM on the first Monday following the expiration of twenty (20) days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.*

Witness, Joanna Staton, District Clerk of Bell County, Texas.

Issued and given under my hand and seal of said Court at office in Belton, Texas, on October 14, 2021.


Joanna Staton, District Clerk

Bell County, Texas
1201 West Huey Road
P.O. Box 909
Belton, Texas 76513

By  Deputy Clerk
K. Simmons

CERTIFICATE OF DELIVERED BY MAIL

I certify that on **10/14/2021** at 3:30 p.m., I mailed by United States Postal Service in postage prepaid envelopes, sent by certified mail, return receipt requested, true copies of the foregoing citation along with a copy of the **PLAINTIFFS' ORIGINAL PETITION** attached to each such citation, all in accordance with the District Clerk standard mailing procedures, and property addressed to following person and address:

By  Deputy Clerk
K. Simmons

RETURN OF CITATION BY CERTIFIED MAIL

Cause No. 21DCV327696

Scott & White Healthplan VS. Actian Corporation

**IN THE
169th Judicial District Court
BELL COUNTY, TEXAS**

**ADDRESS FOR SERVICE:
ACTIAN CORPORATION
REGISTERED AGENT: CT CORPORATION
1999 BRYAN ST.
DALLAS, TX 75201-3136**

Came to hand on October 14, 2021, and executed by mailing to **Actian Corporation** by certified mail, return receipt requested with restricted delivery, a true copy of this citation together with an attached copy of **PLAINTIFFS' ORIGINAL PETITION** to the above address.

Service upon the Defendant is evidenced by the return receipt incorporated herein and attached hereto.

signed by _____ and dated _____

This citation was not executed for the following reason: _____

To certify which witness my hand officially

Joanna Staton, District Clerk
Bell County, Texas
1201 Huey Road
P.O. Box 909
Belton, Texas 76513

By: _____ Deputy Clerk
K. Simmons

**ATTACH RETURN RECEIPT(S) WITH ADDRESSEE'S
SIGNATURES UNLESS DELIVERY UNSUCCESSFUL**

COPYFiled 10/1/2021 11:39 AM
Joanna Staton, District Clerk
District Court - Bell County, TX
by Melissa Wallace, DeputyCAUSE NO. 21DCV327696SCOTT and WHITE HEALTH PLAN and
SHA, LLC d/b/a FIRSTCARE

Plaintiffs,

vs.

ACTIAN CORPORATION,

Defendant.

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§

IN THE DISTRICT COURT OF

BELL COUNTY, TEXAS

169th JUDICIAL DISTRICT**PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF THIS COURT:

COME NOW Plaintiffs, Scott and White Healthplan and SHA, LLC d/b/a FirstCare (hereinafter also referred to as "**Plaintiffs**") and file this Original Petition. Plaintiffs file this petition against Actian Corporation asserting claims under Texas law and respectfully show the Court the following:

I.**TEXAS RULES OF CIVIL PROCEDURE 190 AND 47**

1. Plaintiffs intend to conduct discovery under Level 3 in accordance with Texas Rule of Civil Procedure 190.4. Plaintiffs seek monetary relief between \$200,000 and \$1,000,000. The damages sought are within the jurisdictional limits of this Court.

II.**PARTIES, VENUE, AND JURISDICTION**

2. Plaintiff, SHA, LLC d/b/a FirstCare (hereinafter also "**SHA**") is a wholly owned subsidiary of Plaintiff Scott and White Health Plan, part of the Baylor Scott & White Health network. SHA is a Texas limited liability company doing business at 1206 West Campus Drive, Bell County, Temple, Texas 76502. Scott and White Health Plan's principal place of business is located at 1206

West Campus Drive, Bell County, Temple, Texas 76502. Venue and Jurisdiction are proper in Bell County under Chapter 15.002 of the Texas Civil Practice and Remedies Code.

3. Defendant Actian Corporation (“**Actian**”) is a Delaware corporation doing business at 2300 Geng Road, Suite 150, Palo Alto, California 94303. No service is requested at this time.

III. FACTUAL BACKGROUND

4. SHA offers high-quality, affordable health insurance coverage for communities in North, Central and West Texas. SHA’s parent organization, Baylor Scott & White Health, is the largest not-for-profit health care system in the state of Texas, including 52 hospitals and more than 800 patient access points, including flagship academic medical centers in Dallas and Temple. Baylor Scott & White Health provides the full continuum of care—from primary to award-winning specialty care—throughout Texas and via virtual touchpoints.

5. Actian is a computer software company whose products include the data integration software at issue in this lawsuit, DataConnect (the “Software”). Actian is the successor in interest to Pervasive Software, Inc. (“Pervasive”).

6. On or about April 2014, SHA and Pervasive entered into a license agreement whereby Pervasive agreed to license its Software to SHA (the “License Agreement”).

7. As set forth more fully in the License Agreement, Section 1 of the License Agreement provides that SHA was granted a non-exclusive, non-transferable license to use the Software solely for internal business purposes. SHA used the Software in accordance with the terms of the License Agreement. Throughout the time that SHA utilized the Software, SHA was never required or directed by Pervasive to execute a distribution agreement with Pervasive or pay recurring commercial license subscription fees to Pervasive.

8. Upon information and belief, Actian acquired Pervasive, and Actian asserts that Pervasive

assigned the License Agreement to Actian.

9. After years of utilizing the Software without incident, SHA was informed via emails exchanged between June and September 2021, that Actian believed that SHA owed Actian additional license fees, and Actian claimed that SHA needed to enter into a new Commercial License Subscription. The effect of entering into such an agreement with Actian would be that SHA would be required to pay hundreds of thousands of dollars in additional license fees to Actian.

10. Actian's position conflicts with the unambiguous language of the original License Agreement, which granted SHA a perpetual license. To date, SHA has declined to enter into a Commercial License Subscription with Actian.

11. Actian contends SHA breached the original License Agreement by using the Software to provide services to third-party customers.

12. SHA did not breach the License Agreement. Section 2 of the License Agreement provides that SHA may not "use ... the Software in any way to benefit third parties, including ... using the Software to process data for third parties (e.g., performing data migrations, conversions, or transformations for your customers). (Emphasis added).

13. SHA uses the Software in connection with health insurance claims processing and payments to healthcare providers on behalf of SHA insured customers, however SHA has never provided access to the Software to any third parties.

14. SHA has not sublicensed, leased, or rented the Software to any third party in violation of the perpetual license agreement. SHA has not provided any third parties with access to the software, ever. Thus, SHA has not breached the License Agreement, and Actian does not have the right to terminate the same.

15. Because Actian's interpretation of the License Agreement is unreasonable and conflicts with

the plain language of the License Agreement as well as with historical course of business dealings between the parties, SHA has both via email and in numerous phone conferences repudiated Actian's unlawful attempts.

16. Actian's threat to terminate the License Agreement, and/or demand unjustified licensing fees and/or foist new agreements upon SHA constitute a breach of contract. There is an actual and justiciable controversy regarding the interpretation of the License Agreement, and Actian's unjustified attempt to extract additional license fees from SHA.

IV.
CAUSES OF ACTION

Count One — Breach of Contract

17. The License Agreement is a valid, binding contract.

18. SHA performed under the License Agreement.

19. SHA has not breached the License Agreement, and thus Actian lacks the right to terminate the License Agreement.

20. Despite this, Actian provided notice to SHA that the License Agreement has terminated. Actian has therefore failed to perform in accordance with the License Agreement.

21. SHA seeks its actual damages, as well as its reasonable and necessary attorneys' fees and costs, in accordance with Section 38.001 of the Texas Civil Practice and Remedies Code.

Count Two — Declaratory Judgment

22. As set forth herein, a justiciable controversy exists in which SHA has an interest.

23. Plaintiffs request that this Bell County District Court declare: 1) SHA has not breached the License Agreement; 2) Actian has no right to terminate the License Agreement; 3) SHA is not required to enter into a Commercial License Subscription; and 4) SHA owes no additional license fees or other sums to Actian.

24. Further, an award of reasonable and necessary attorneys' fees to Plaintiffs would be equitable and just and therefore authorized by Section 37.009 of the Texas Civil Practice and Remedies Code.

V.
PRAYER FOR RELIEF

For the reasons set forth above, Plaintiffs respectfully request:

- a. an award of damages in its favor in an amount to be determined at trial;
- b. declaratory relief as set forth above;
- c. an award of attorneys' fees and costs; and
- d. all other relief to which Plaintiffs may show themselves justly entitled, both in equity and under law.

Respectfully Submitted,

GERMER BEAMAN & BROWN PLLC
One Barton Skyway
1501 S. Mopac Expy, Suite A400
Austin, Texas 78746
(512) 472-0288 Telephone
(512) 472-0721 Facsimile

By: 

R. Chad Geisler
State Bar No. 00793793
cgeisler@germer-austin.com
Missy Atwood
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matwood@germer-austin.com
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rbueche@germer-austin.com

ATTORNEYS FOR PLAINTIFFS

JOANNA STATON
BELL COUNTY DISTRICT CLERK
REQUEST FOR SERVICE

CAUSE NUMBER 21DCV327696

STYLE Scott & White Healthplan and SHA, LLC d/b/a FirstCare v. Actian Corporation

JOANNA STATON
 DISTRICT CLERK
 BELL COUNTY, TX
 BY [Signature] DEPUTY
 2021 OCT 12 P 1:34

FILED

TYPE OF SERVICE REQUESTED

COST FOR SERVICE

DISTRICT CLERK SHERIFF/CONSTABLE

<input type="checkbox"/> Resident Citation	\$8.00	\$80.00
<input type="checkbox"/> Non-Resident Citation	\$8.00	
<input type="checkbox"/> Citation by Restricted Mail	\$80.00	
<input type="checkbox"/> Citation to Secretary of State	\$12.00	
<input type="checkbox"/> Citation to Secretary of State by Certified Mail	\$82.00	
<input checked="" type="checkbox"/> Citation by Certified Mail	\$78.00	
<input type="checkbox"/> Citation by Publication (newspaper)	\$78.00	
<input type="checkbox"/> Citation by Publication (courthouse door)	\$78.00	
<input type="checkbox"/> Show Cause	\$8.00	\$80.00
<input type="checkbox"/> Temporary Restraining Order	\$8.00	\$100.00
<input type="checkbox"/> Notice Application for Protective Order	\$8.00	\$20.00
<input type="checkbox"/> Subpoena	\$8.00	\$80.00
<input type="checkbox"/> Subpoena-Duces Tecum	\$8.00	\$80.00
<input type="checkbox"/> Abstract of Judgment	\$8.00	
<input type="checkbox"/> Order of Sale	\$8.00	\$150.00
<input type="checkbox"/> Capias	\$8.00	\$150.00
<input type="checkbox"/> Notice of Expunction	\$8.00	
<input type="checkbox"/> Order of Expunction	\$8.00	
<input type="checkbox"/> Bench Warrant	\$8.00	\$150.00
<input type="checkbox"/> Writ of Attachment	\$8.00	\$250.00
<input type="checkbox"/> Writ of Execution	\$8.00	\$250.00
<input type="checkbox"/> Writ of Garnishment	\$8.00	\$150.00
<input type="checkbox"/> Writ of Habeas Corpus	\$8.00	\$150.00
<input type="checkbox"/> Writ of Injunction	\$8.00	\$125.00
<input type="checkbox"/> Writ of Possession	\$8.00	\$150.00
<input type="checkbox"/> Writ of Sequestration	\$8.00	\$150.00
<input type="checkbox"/> Expedited Foreclosures (includes certified & 1 st class mail)	\$86.00	
<input type="checkbox"/> Other: _____		

NAME AND ADDRESS OF PERSON TO BE SERVED:

Actian Corporation through its registered agent:

CT Corporation

1999 Bryan St.

Dallas, Tx. 75201-3136

TO BE SERVED BY:

☐ Bell County Sheriff

☐ Private Process _____

☐ Back to Attorney

☒ District Clerk

☐ Constable _____

REQUESTED BY:

R. Chad Geisler

DATE REQUESTED:

10/12/2021

server: C/M

THE STATE OF TEXASCITATION BY MAIL
Cause No. 21DCV327696Clerk's
Copy

To:

**ACTIAN CORPORATION
REGISTERED AGENT: CT CORPORATION
1999 BRYAN ST.
DALLAS, TX 75201-3136****Defendant**, in the hereinafter styled and numbered cause:

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Joanna Staton, District Clerk
Bell County, Texas
1201 West Huey Road
P.O. Box 909
Belton, Texas 76513

By: _____ Deputy Clerk
K. Simmons**CERTIFICATE OF DELIVERED BY MAIL**

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7019 1120 0002 1769 6147
%327696 CICM/KDS
ACTIAN CORPORATION
REGISTERED AGENT: CT CORPORATION SYSTEM
1999 BRYAN ST.
DALLAS, TX 75201-3136

By: _____ Deputy Clerk
K. SimmonsClerk's
Copy